

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**This filing relates to the
Commonwealth, ERS and HTA.**

**REPLY OF THE COMMONWEALTH OF PUERTO RICO, THE PUERTO RICO
HIGHWAYS AND TRANSPORTATION AUTHORITY, AND THE EMPLOYEES
RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF
PUERTO RICO TO RESPONSE FILED BY CLAIMANTS JEANETTA PIRTLE AND
HUMBERTO MEDINA-TORRES [ECF NO. 16873] TO THREE HUNDRED
FOURTEENTH OMNIBUS OBJECTION (SUBSTANTIVE) TO NO LIABILITY
CLAIMS**

To the Honorable United States District Judge Laura Taylor Swain:

The Commonwealth of Puerto Rico (the “Commonwealth”), the Puerto Rico Highways and Transportation Authority (“HTA”), and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS,” and together with the Commonwealth and HTA,

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (vi) Puerto Rico Public Buildings Authority (“PBA”, and together with the Commonwealth, COFINA, HTA, ERS, and PREPA, the “Debtors”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

the (“Debtors”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the sole Title III representative of the Debtors pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² file this reply (the “Reply”) to the *Motion Requesting Leave to Withdraw Legal Representation and Objection to Filing No. 16638* [ECF No. 16873] (the “Response”), filed on behalf of Jeanetta Pirtle and Humberto Medina-Torres (collectively, the “Claimants”), and in support of the *Three Hundred Fourteenth Omnibus Objection (Substantive) of the Commonwealth of Puerto Rico, Puerto Rico Highways and Transportation Authority, and Employees Retirement System of the Government of the Commonwealth of Puerto Rico to Claims for which the Debtors Are Not Liable* [ECF No. 16638] (the “Three Hundred Fourteenth Omnibus Objection”). In support of this Reply, the Debtors respectfully represent as follows:

1. On April 30, 2021, the Commonwealth filed the Three Hundred Fourteenth Omnibus Objection seeking to disallow proofs of claim for which the Debtors are not liable (collectively, the “Claims to Be Disallowed”), because, *inter alia*, they assert liabilities associated with litigations that have been dismissed. Exhibit A to the Three Hundred Fourteenth Omnibus Objection provides additional explanations for why the Debtors believe they are not liable for each of the Claims to Be Disallowed.

2. Any party who disputed the Three Hundred Fourteenth Omnibus Objection was required to file a response by 4:00 p.m. (Atlantic Standard Time) on June 16, 2021, in accordance with the Court-approved notice attached to the Three Hundred Fourteenth Omnibus Objection as Exhibit C, which was served in English and Spanish on the individual creditors subject to the Three

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

Hundred Fourteenth Omnibus Objection, the U.S. Trustee, and the Master Service List (as defined in the *Fourteenth Amended Case Management Order* [ECF No. 15894-1]).

3. On May 28, 2018, Claimants filed a proof of claim against the Commonwealth, which was logged by Prime Clerk, LLC as Proof of Claim No. 27635 (the “Claim”). The Claim asserts liabilities associated with a personal injury litigation filed in the United States District Court for the District of Puerto Rico and captioned *Jeanetta B. Pirtle, et al. v. Municipality of Isabela, et al.*, Case No. 18-1200 (the “Litigation”). The Claim attached a copy of the complaint that initiated the Litigation (the “Complaint”). The Complaint alleges that, on April 15, 2017, Ms. Pirtle slipped and fell while “walking through an alleyway to Poza Azul Beach at Isabela, Puerto Rico,” as a result of which she “suffered a fracture of her right ankle” and an unspecified injury to her right arm. Compl. at 2-3. The Complaint seeks damages in the amount of \$1,635,000 as compensation for physical and emotional damages suffered by Ms. Pirtle and her boyfriend, Mr. Medina-Torres, as a result of this accident. The Complaint named as defendants the Municipality of Isabela, unnamed individuals who “upon information and belief created the dangerous condition at the access site,” and the liability insurers of the co-defendants. Compl. at 1.

4. Claimants filed their Response to the Three Hundred Fourteenth Omnibus Objection on June 2, 2021. Therein, Claimants do not dispute that the Litigation was dismissed against all defendants, with prejudice, on July 13, 2020. Response, Ex. 6. Rather, the Response contends that “the Municipality of Isabela represented that the access to the beach belongs to Commonwealth of Puerto Rico, specifically to the Department of Natural and Environmental Resources.” Response at 2 (citing the Municipality of Isabela’s *Answers to Interrogatories and Request for Production of Documents*, dated February 20, 2020). Accordingly, the Response

contends the Claim is “valid and should not be disallowed, as Debtor Commonwealth of Puerto Rico is and/or may be liable for the damages suffered by [Claimants].” *Id.* at 3.

5. Under Puerto Rico law, tort claims, including tort claims arising from personal injuries, must be filed within one year “from the time the aggrieved person had knowledge thereof.” 31 L.P.R.A. § 5298. In addition, claimants who seek to assert liabilities for tort claims against a government entity must file a certification with the relevant government entity within ninety (90) days of the incident, or within ninety (90) days of the time the claimant became aware of the entity’s responsibility for the alleged injuries. Here, upon a reasonable search of the Commonwealth’s records, the Department of Justice identified a certification filed by Claimants on July 12, 2017, within the required 90-day time frame. However, Claimants did not thereafter name defendants in the Litigation, nor did they initiate any other litigation against the Commonwealth. Because Claimants failed to initiate litigation against the Commonwealth, the statute of limitations has, accordingly, expired. *Fraguada Bonilla v. Hospital Auxilio Mutuo*, 186 D.P.R. 365 (P.R. 2012). Therefore, even if the Claim did seek to assert liabilities against the Commonwealth associated with personal injuries arising from Ms. Pirtle’s April 2017 accident, the Commonwealth is not liable for such injuries, as the statute of limitations on the Claimants’ claims has since expired.

6. Because the Debtors are not liable for the Claim, the Commonwealth respectfully requests that the Court grant the Three Hundred Fourteenth Omnibus Objection and disallow the Claim in its entirety, notwithstanding the Response.

[Remainder of Page Intentionally Left Blank]

Dated: July 28, 2021
San Juan, Puerto Rico

Respectfully submitted,

/s/ Ricardo Burgos
Ricardo Burgos Vargas
USDC No. 218210
A&S LEGAL STUDIO, PSC
434 Ave. Hostos
San Juan, PR 00918
Tel.: (787) 751-6764
Fax: (787) 763-8260

*Attorneys for the Financial Oversight and
Management Board for Puerto Rico, as
representative for the Commonwealth of
Puerto Rico*

/s/ Martin J. Bienenstock
Martin J. Bienenstock (*pro hac vice*)
Brian S. Rosen (*pro hac vice*)
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

*Co-Attorneys for the Financial Oversight
and Management Board for the Puerto Rico,
as representative for the Commonwealth of
Puerto Rico*